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ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN HOFER,

Plaintiff,

v.

K. EMLEY, a Contra Costa County Deputy Sheriff, in his individual capacity, W. ODOM, a Contra Costa County Deputy Sheriff, in his individual capacity, B. GANT, a Contra Costa County Deputy Sheriff, in his individual capacity, and Defendant Doe.

Defendants.

Case No.

COMPLAINT AND JURY DEMAND

Plaintiff Brian Hofer, an individual, hereby alleges:

1. This is a civil rights case based upon Defendants' violation the Fourth Amendment's prohibition against unreasonable searches and seizures. Defendants stopped, searched, detained, and arrested Plaintiff without probable cause to believe he committed a crime, and searched his vehicle without probable cause or a warrant. Plaintiff brings this case to vindicate his constitutional rights and recover damages for Defendants' unlawful conduct.

PARTIES

2. Plaintiff BRIAN HOFER (“BRIAN”) is and was an individual residing in Oakland, Alameda County, California during the relevant time period in this action.

3. Defendant K. EMLEY (“EMLEY”) was a Deputy Sheriff of Contra Costa County at all times relevant to this action.

4. Defendant B. GANT (“GANT”) was a Deputy Sheriff of Contra Costa County at all times relevant to this action.

5. Defendant W. ODOM (“ODOM”) was a Sergeant in the Contra Costa Sheriff’s Department at all times relevant to this action.

6. Defendant Doe is sued herein under a fictitious name. His true name is unknown to Plaintiff. When his true name is ascertained, Plaintiff will seek leave from the Court to amend this Complaint by inserting Doe’s real name. Plaintiff is informed and believes, and thereon alleges, that Doe was acting under color of state law with the named Defendants and is in some manner legally responsible for the actions alleged in this Complaint.

JURISDICTION AND VENUE

7. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) because it is brought to obtain compensatory and punitive damages for the deprivation, under color of state law, of the rights of citizens of the United States that are secured by the United States Constitution, pursuant to 42 U.S.C. §§ 1983 and 1988. Plaintiff brings this pursuant to the Fourth Amendment to the United States Constitution.

8. **Intradistrict Assignment:** A substantial part of the acts and/or omissions in this Complaint occurred in the County of Contra Costa, California. Pursuant to Civil L.R. 3-2(c) this case is properly assigned to the Oakland or San Francisco Division of the Court.

FACTS

9. On November 21, 2018, BRIAN rented a car so that he and his brother Jonathan could travel north to visit family for the Thanksgiving holiday. The car was rented without incident.

1 10. On November 25, 2018, as BRIAN and Jonathan were returning to Oakland from the
2 holiday, driving west on I-80 near San Pablo, California. At approximately 6:50 p.m., they were
3 stopped by a Contra Costa Sheriff's deputy, later identified as GANT. After tailing them for a period
4 of time, GANT flashed his lights and directed BRIAN over the loudspeaker to exit the freeway.

5 11. BRIAN complied and exited I-80 by taking the San Pablo Dam Road off-ramp, and he
6 pulled into a well-lit shopping center parking lot near Ross Dress for Less and Jack in the Box.
7 BRIAN put the car into park, turned off the engine, and turned on the inside dome light so that the
8 officer could see them.

9 12. At this time, two other Sheriff vehicles surrounded BRIAN and Jonathan's vehicle.
10 The drivers of these other two police vehicles were later identified as EMLEY and ODOM.

11 13. Next, GANT made a statement to BRIAN that "you probably have some idea what is
12 going on," but made no other attempt to communicate. BRIAN stated to GANT that he did not have
13 any idea what was going on, and BRIAN requested that GANT check their identification and discuss
14 the matter with them.

15 14. GANT next directed BRIAN to remove the key and place it on the roof of the vehicle.
16 BRIAN complied.

17 15. GANT next directed BRIAN to place both hands outside the driver's window. BRIAN
18 complied.

19 16. GANT next directed Jonathan to place both hands outside the passenger window.
20 BRIAN informed GANT that this was impossible, as the power window was rolled up, and without
21 the key to turn on the engine, the window couldn't be opened. GANT acknowledged this.

22 17. GANT next directed BRIAN to open his driver side door, to place his hands behind his
23 head, and to walk backwards towards the sound of GANT's voice. It was at this time that BRIAN
24 noticed GANT's gun was drawn, as was EMLEY's. BRIAN could not see ODOM at this time.
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1 18. BRIAN complied with GANT's directions. As he reached GANT, GANT grabbed
2 BRIAN's hands and handcuffed them behind BRIAN's back. GANT made no attempt to check
3 BRIAN's identification, nor ask any questions about the car or BRIAN himself.

4 19. GANT next placed BRIAN in the back of GANT's vehicle.

5 20. EMLEY and GANT next directed Jonathan to exit the passenger side door in a similar
6 manner as BRIAN. BRIAN, from the back of GANT's vehicle, saw that a third officer, ODOM, also
7 had his gun drawn at Jonathan from the other side of the vehicle.

8 21. Jonathan complied with the officer's directions, walking slowly and non-threateningly
9 towards EMLEY as directed.

10 22. For some unknown reason, EMLEY started screaming at Jonathan, and forced
11 Jonathan to his knees, facing away from EMLEY. In full view of BRIAN, EMLEY pointed a gun at
12 the back of Jonathan's head execution-style. BRIAN was terrified that if he yelled, EMLEY would
13 shoot Jonathan in the head, so he stayed quiet and still in GANT's car. EMLEY next slammed
14 Jonathan forward to the ground, causing Jonathan to be injured.

15 23. EMLEY then handcuffed Jonathan, and placed Jonathan in the back of EMLEY's
16 vehicle.

17 24. Neither GANT, ODOM, nor EMLEY made any attempt to identify BRIAN or
18 Jonathan, nor communicate any information about what was occurring.

19 25. The three officers next searched BRIAN's rental vehicle, opening all doors and the
20 trunk. GANT unzipped the suitcases in the trunk and examined inside the luggage, which contained
21 clothing.

22 26. At no time did either BRIAN or Jonathan consent to the officers' searches.

23 27. It was at this time that GANT finally asked BRIAN for his identification. BRIAN
24 directed GRANT to his front pocket, and GANT removed BRIAN's wallet containing his driver's
25 license. GANT presumably called dispatch, using his radio to check BRIAN's identification.
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1 28. BRIAN witnessed EMLEY do the same to Jonathan, removing Jonathan's
2 identification and using his radio to inquire.

3 29. GANT next walked over to BRIAN and finally stated that an automatic license plate
4 reader system registered the car's license plate as a 'hit' against a stolen vehicle list.

5 30. BRIAN protested his innocence, and said he had rented the car from Getaround, stating
6 he could prove it. GANT asked BRIAN where the rental paperwork was. BRIAN stated to GANT that
7 it was arranged through an application on his smartphone, which was still in the vehicle.

8 31. GANT fetched the phone and walked over to BRIAN, demanding the passcode to enter
9 it. BRIAN refused and asked to enter it himself. GANT refused this request, so BRIAN reluctantly
10 gave GANT the code.

11 32. GANT opened the phone's screen, and BRIAN directed him to the Getaround
12 application. Upon opening, the application showed an active car rental. GANT walked away to talk to
13 the other officers.

14 33. GANT then called Getaround. Getaround stated to GANT that BRIAN had rented the
15 car as he claimed.

16 34. GANT next got BRIAN out of the vehicle and took off the handcuffs. EMLEY did the
17 same for Jonathan. By this time of the evening, BRIAN and Jonathan had been in police custody for
18 approximately forty minutes.

19 35. ODOM next walked up to BRIAN and stated that he "told the others the 'hit' made no
20 sense."

21 36. GANT informed BRIAN that they could not yet leave, as he was waiting on his
22 supervisor, Defendant Doe, to bring some paperwork. Doe arrived but did not speak to BRIAN or
23 Jonathan.

24 37. Doe handed GANT a single sheet of mostly blank paper, and GANT asked BRIAN to
25 sign it, stating that by signing it, BRIAN was acknowledging he'd been detained for longer than 15
26 minutes. No such paperwork was presented to Jonathan. BRIAN signed it.
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38. BRIAN and Jonathan left the scene, and returned the vehicle to the Getaround lot.

42 U.S.C. § 1983: FOURTH AMENDMENT

39. Pursuant to the foregoing, each Defendant violated Plaintiff's rights under the Fourth Amendment to the United States Constitution.

40. Defendants unlawfully stopped, detained, and arrested BRIAN. Defendants further conducted a warrantless search of his trunk and suitcases, using excessive force throughout the ordeal.

41. Defendants' constitutional violations caused BRIAN damages for which he is entitled to recovery.

WHEREFORE, Plaintiff demands judgment in his favor as follows:

- a. Damages in an amount to be proven at trial;
- b. Costs of suit incurred herein;
- c. Attorney's fees as provided by law;
- d. Punitive damages; and
- e. Such other and further relief in favor of Plaintiff as is just and proper.

Respectfully submitted,

/s/ Glenn Katon
Glenn Katon

ATTORNEY FOR PLAINTIFF